

IC 23-18-5

Chapter 5. Finance

IC 23-18-5-1

Promises to contribute property or services; enforceability

Sec. 1. (a) A promise by a member to make a contribution to the limited liability company is not enforceable unless the promise is written and signed by the member.

(b) Except as otherwise provided in a written operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform for any reason, including death and disability.

(c) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to the value of that portion of the contribution that has not been made. This option is in addition to and not in lieu of any other rights, including the right to specific performance, that the limited liability company may have against the member under the operating agreement or applicable law. *As added by P.L.8-1993, SEC.301.*

IC 23-18-5-2

Obligation to make capital contribution or other payment; compromise; effect; remedies or consequences of nonpayment

Sec. 2. (a) The obligation of a member to make a capital contribution or return money or other property paid or distributed in violation of this article may be compromised only:

- (1) in compliance with a written operating agreement; or
- (2) if a written operating agreement does not so provide, with the unanimous consent of the members.

(b) Any compromise does not affect the rights, if any, of any creditor of a limited liability company who, before the compromise, extends credit or acts in reliance on the obligation after the member signs a writing that reflects the obligation.

(c) An operating agreement may provide that a member who fails to make a capital contribution or other payment that the member is required to make is subject to specified remedies for or specified consequences of the failure. The remedy or consequence may include the following form:

- (1) Reducing the defaulting member's interest in the limited liability company.
- (2) Subordinating the defaulting member's interest in the limited liability company to that of nondefaulting members.
- (3) A forced sale of the defaulting member's interest in the limited liability company.
- (4) Forfeiture of the defaulting member's interest in the limited liability company.
- (5) A loan by the nondefaulting members of the amount necessary to meet the commitment.

(6) A determination of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the defaulting member's interest in the limited liability company at that value.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-3

Allocation of profits and losses

Sec. 3. Unless otherwise provided in the operating agreement, profits and losses must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-4

Shared distributions of cash or other assets

Sec. 4. Except as provided in section 5 or 5.1 of this chapter and IC 23-18-9-6, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in the operating agreement. If the operating agreement does not provide otherwise, distributions must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the operating agreement or at the times determined by the members or managers, if any, voting under IC 23-18-4-3.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.3.

IC 23-18-5-5

Dissociation; companies existing on or before June 30, 1999

Sec. 5. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5 that does not cause dissolution, a dissociating member is entitled to receive:

- (1) any distribution that the member is entitled to under this article or the operating agreement; and
- (2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a

distribution received under subdivision (1).
As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.4; P.L.130-2006, SEC.29.

IC 23-18-5-5.1

Dissociation; companies formed after June 30, 1999

Sec. 5.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5, a dissociating member is entitled to receive:

- (1) any distribution that the member is entitled to under this article or the operating agreement; and
- (2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a distribution received under subdivision (1).

As added by P.L.269-1999, SEC.5. Amended by P.L.130-2006, SEC.30.

IC 23-18-5-6

Distributions

Sec. 6. (a) A distribution may not be made if after giving effect to the distribution:

- (1) the limited liability company would not be able to pay its debts as the debts become due in the usual course of business; or
- (2) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed if the affairs of the limited liability company were to be wound up at the time of the distribution to satisfy any preferential rights that are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subsection (a) upon one (1) of the following:

- (1) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- (2) A fair valuation of assets and liabilities or other reasonable method approved by the members or managers, if any.

(c) Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured as of:

- (1) the date the distribution is authorized if the payment occurs not more than one hundred twenty (120) days after the date of authorization; or
- (2) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(d) A limited liability company's indebtedness to a member incurred by reason of an obligation to make a distribution in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

(e) If terms of the indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (b).

(f) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-7

Unlawful distributions; liability

Sec. 7. (a) A member or manager who votes for or assents to a distribution in violation of the operating agreement or section 6 of this chapter is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without violating the operating agreement or section 6 of this chapter or if it is established that the member or manager did not act in compliance with section 6 of this chapter.

(b) Each member or manager held liable under subsection (a) for an unlawful distribution is entitled to contribution from the following:

(1) Each other member or manager who could be held liable under subsection (a) for the unlawful distribution.

(2) Each member for the amount the member received knowing that the distribution was made in violation of the operating agreement or section 6 of this chapter.

(c) A proceeding under this section is barred unless it is commenced not more than two (2) years after the date on which the effect of the distribution is measured under section 6 of this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-8

Distributions in kind

Sec. 8. (a) Except as provided in the operating agreement, a member, regardless of the nature of the member's contribution, does not have a right to demand and receive a distribution from a limited liability company in a form other than cash.

(b) Except as provided in the operating agreement, a member may not be compelled to accept a distribution in kind from a limited liability company to the extent that the member's percentage interest in the assets being distributed in kind exceeds the percentage of distributions that the member is entitled to receive under section 4 of

this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-9

Status of member entitled to receive distribution

Sec. 9. At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

As added by P.L.8-1993, SEC.301.